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C.R.P.No.3496 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.3496 of 2022

and

C.M.P.No.18625 of 2022

1.Selvaraju

2.Raja

3.Raghu

4.Tmt.Periyanayagam

... Petitioners

Vs.

Tmt.Meenakshiammal

... Respondent

Prayer: The Civil Revision Petition filed under Section 115 f Civil Procedure Code to revise the orders in fair and decreetal order dated 25.07.2022 passed in I.A.No.1 of 2019 in O.S.No.159 of 2019, on the file of the District Munsif and Judicial Magistrate Sendurai.

For Petitioners

: Mr.S.Kamadevan

For Respondent

: No appearance



ORDER

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The Civil Revision Petition is filed challenging the fair and decreetal order dated 25.07.2022 passed in I.A.No.1 of 2019 in O.S.No.159 of 2019.

2. The Revision Petitioners are the defendants in the suit, instituted by the respondent for recovery of possession and to pay the mean profits. The revision petitioner/ defendant filed an Interlocutory Application under Order 7 Rule 11 of C.P.C for rejection of plaint. The application was filed mainly on the ground that the revision petitioner is the auction purchaser and admittedly, the sale was confirmed on 09.04.2001 and thus, the suit, if at all, must be instituted within a period of 12 years from the date of sale confirmation, as per the Article 65 (c) of the Limitation Act, 1963.

3. Earlier, the respondent herein filed Civil Revision Petition in CRP No.1958 of 2004 and this Court granted exclusion of the period of limitation for institution of the suit by the respondent. However, the revision petitioner further filed a review petition and the said review petition was allowed by this Court and the exclusion of the period of limitation granted by this Court was deleted. Thus, the period of limitation stood as it was and



the respondent ought to have instituted a suit within a period of 12 years from the date of sale confirmation.

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4. The suit in O.S.No.270 of 2014 was instituted on 17.09.2014, after a lapse of 12 years from the date of sale confirmation. Thus, the plaint is to be rejected. The respondent filed a counter in the Interlocutory Application, stating that the High Court granted liberty to institute a suit. Accordingly, the respondent filed a suit and thus, the ground regarding the limitation raised by the revision petitioner is to be rejected. The trial Court considered the issues and made a finding that the limitation is a mixed question of fact and law and therefore, the suit is to be adjudicated on merits. The trial Court took note of the sale confirmation dated 09.04.2001, but proceeded on the basis that the Civil Revision Petition was filed before the High Court, wherein a liberty was granted to the respondent for filing a fresh suit. Thus, all such factors are to be considered in the suit by framing issues and conducting trial.

5. Order 7 Rule 11 (d) stipulates that “where the suit appears from the statement in the plaint to be barred by any law, then the plaint is to be rejected”.



6. The Article 65 (c) of the Limitation Act, 1963 denotes “where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession and the period of limitation for institution of the suit is 12 years from the date of sale confirmation.”

7. In the present case, the sale was confirmed on 09.04.2001 and the suit was instituted on 17.09.2014, after a lapse of 12 years from the date of confirmation of sale and the exclusion of limitation granted by the High Court in the Civil Revision Petition was subsequently deleted in the review petition. Therefore, the respondent cannot take shelter with reference to the order passed in CRP NPD.No.1958 of 2004. The trial Court has failed to consider the scope of the Order 7 Rule 11, Sub Clause (d) of the Code of Civil Procedure. In the present case, it is not the mixed question of fact and law and it is a pure question of law, which ought to have been decided by the trial Court and thus, this Court is inclined to consider the Civil Revision Petition. Accordingly, the fair and decreetal order dated 25.07.2022 in I.A.No.1 of 2019 in O.S.No.159 of 2019 is set aside.



8. Accordingly, the Civil Revision Petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

20.12.2022

skr/sp
Index : Yes
Speaking order

To

The XIV Assistant Judge,
City Civil Court,
Chennai.



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S.M.SUBRAMANIAM, J.

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